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Supreme Court of the United States

1969 TERM.

[redacted]

JAMES H. MORRISON,

Petitioner,

versus

JOHN R. RARICK,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BASCOM D. TALLEY, JR., ESQ.,
TALLEY, ANTHONY, HUGHES & KNIGHT,
322 Columbia Road,
Bogalusa, La.,

SAM ZELDEN, ESQ.,
ZELDEN & ZELDEN,
1051 National Bank of Commerce Bldg.,
New Orleans, Louisiana.

INDEX.

	Page
I. CITATION TO OFFICIAL REPORT DELIVERED IN THE COURT BELOW	1
II. GROUND FOR COURT'S JURISDICTION	2
III. QUESTIONS PRESENTED FOR REVIEW	2
IV. CONSTITUTIONAL PROVISIONS INVOLVED	3
V. STATEMENT OF THE CASE	4
VI. ARGUMENT	7
PETITIONER'S PRAYER	12
CERTIFICATE	13

APPENDICES:

APPENDIX "A": Petitioner's Preemptory Exception of No Cause or Right of Action	15
APPENDIX "B": Judgment of a Lower Court	17
APPENDIX "C": Written Reasons for Judgment of Lower Court	19
APPENDIX "D": Judgment of Court of Appeal of Louisiana	27
APPENDIX "E": Judgment of Supreme Court of Louisiana ..	28

INDEX—(Continued):

Page

APPENDIX "F":
Plaintiff's (Respondent Herein) Petition with Interrogatories 29

APPENDIX "G":
Petitioner's Answer to Said Interrogatories 42

APPENDIX "H":
Motion by Petitioner for Income Tax Returns 44

APPENDIX "I":
1966 Income Tax Return of Respondent .. 48

APPENDIX "J":
1967 Income Tax Return of Respondent .. 49

CITATIONS.

United States Constitution:
Article III, Sec. 2 2
First Amendment 2, 4
Fourteenth Amendment 2, 4

Cases:
Rarick v. Morrison, 214 So.2d 545 (1968) 1
New York Times v. Sullivan, 376 U.S. 254; 84 S.Ct. 710; 11 L.Ed.2d 686 (1964) ..6, 7, 8, 9, 10
Thompson v. St. Amant, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968) 7, 8
Belli v. Orlando Daily Newspapers, (1967) 7
Noonan v. Rousselot, 48 Cal. 817 (1966) 8, 9, 10

SUPREME COURT OF THE UNITED STATES

1969 TERM.

No. 49,466.

JAMES H. MORRISON,
Petitioner,

versus

JOHN R. RARICK,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of James H. Morrison, with respect shows unto the Honorable Court as follows:

I.

CITATION TO OFFICIAL REPORT OF OPINION DELIVERED IN THE COURTS BELOW.

The opinion rendered by the Court below is reported in 214 So.2d 545 (1968).

II.

GROUNDS FOR THE COURT'S JURISDICTION.

The decree sought to be reviewed was rendered on October 9, 1968 (p. 28). The time for filing this petition is January 7, 1969. The jurisdiction of the Honorable Court is invoked under Article III, Section 2, the First and Fourteenth Amendments of the Constitution of the United States.

III.

QUESTIONS PRESENTED FOR REVIEW.

1. Were certain statements in printed form attributed to have been made, by Petitioner, (Appellant) James H. Morrison, and John Doe in a Congressional campaign against his opponent, the respondent, that he was a member of the Ku Klux Klan, made with actual malice, i.e., with knowledge, that they were false or in reckless disregard of whether they were false or true, so as to allow recovery by this candidate, for office, in a civil action for libel and slander?

2. Were statements that respondent (appellee herein) who at the time was a candidate for office, was a member of the Ku Klux Klan, libelous, slanderous, and made with actual malice, so as to allow recovery by this candidate for office in a civil action for libel and slander?

3. Is respondent's (appellee herein) petition which alleges "that petitioner (appellant herein) acting in a conspiracy with John Doe and certain other defendants unknown to respondent (appellee herein) caused to be published and did publish and distribute a four page newspaper which contained material which is false, untrue and maliciously libelous as to plaintiff, who then was a candidate in an election for U. S. Representative to Congress, and that same was done with actual malice and with full knowledge, that said material was false or alternatively with reckless disregard as to whether it was false or not and that said material was published to injure, harm and embarrass plaintiff personally," . . . sufficient to state a *cause of action* under the "with actual malice" doctrine of the U. S. Supreme Court?

4. Where respondent (appellee) in answer to interrogatories states that damages to him are speculative and where his United States income tax returns for the following year of 1967 reveal that his income was almost twice that of the year of 1966 when he filed this suit and alleged he was libeled and slandered in 1966, is this sufficient to state a *right* of *action* in such a civil suit?

IV.

CONSTITUTIONAL PROVISIONS INVOLVED.

a. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exer-

cise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." United States Constitution, First Amendment.

b. ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." United States Constitution, Fourteenth Amendment, Section 1.

MAY IT PLEASE THE COURT:

V.

STATEMENT OF THE CASE.

This matter involves a suit for damages, filed on August 10, 1966, by John R. Rarick (respondent herein) against James H. Morrison (appellant herein) and John Doe and other unknown defendants for Five Hundred Thousand Dollars ($500,000.00), who at the time the alleged incidents occurred, was a qualified candidate in an election for the United States House of Representatives from the 6th Congressional District, State of Louisiana.

In his original petition, respondent charges that during this political campaign petitioner, also a candidate, being the incumbent Member of Congress, did along with defendant, "John Doe", and certain other unknown defendants act in a conspiracy with them, and further alleges that they did cause to be published a four-page paper which is alleged to have contained a large amount

of material which respondent contends is totally false, untrue, and maliciously libelous, and alternatively alleging that said material was published with reckless disregard of whether it was false or not and charging that your petitioner and the other defendants caused said material to be published with the specific intention to injure, harm and embarrass respondent personally; said material stating that respondent was a member of the Ku Klux Klan, and as such was an unfit and unworthy person by virtue of said membership.

Petitioner, James H. Morrison, in answer to respondent's interrogatories, denied these allegations (p. 42) and filed a peremptory exception of no cause or right of action. (p. 15.)

Judgment was rendered in the district court overruling and dismissing said exception. Judgment (p. 17) and reasons (p. 19).

Application was made for writs of certiorari to the Louisiana Court of Appeals, First Circuit. This ruling of this Court was, "Writs refused". (p. 27.)

Application was then made to the Louisiana Supreme Court for writs of certiorari. The Louisiana Supreme Court on October 9, 1968, rendered the following decision, "The ruling of the trial court is correct." (p. 28.) Petitioner (appellant) now petitions to this Court for a writ of certiorari.

The question presented in this request for a writ of certiorari is whether the printed remarks and statements allegedly made by petitioner, James H. Morri-

son, were made with actual malice, that is, they were made with knowledge of falsity or in reckless disregard of whether they were true or false?

Respondent alleges that these statements to have been made by petitioner, were made with actual malice or with reckless disregard of whether they were true or false. It is respectfully submitted that these statements were not made maliciously and regardless of who made them, that under the candidate and public official doctrine and rule of the *New York Times v. Sullivan,* 376 U.S. 254; 84 S.Ct. 710; 11 L.Ed.2d 686 (1964) case, the First and Fourteenth Amendments *do* guarantee the protection and privilege of free speech.

Free expression of opinion by its very nature is believed to be true by the expressor. One might be held for libel for wanton disregard for truth, but not for mistaken opinion.

In the *New York Times* case *(supra),* statements made or printed even though erroneous, honestly made, about a public official, are protected under the First and Fourteenth Amendments from civil liability.

Actual malice according to the doctrine of the *New York Times (supra)* case, cannot be presumed, and must be set out by most convincing clarity.

The constitutional safeguards of freedom of speech were offered as a defense in the recent decision, *New York Times Co. v. Sullivan (supra).*

Petitioner urges that the actual malice rule of this *New York Times* case *(supra)* applies herein.

VI.

ARGUMENT.

It is undisputed that respondent John R. Rarick was a duly qualified candidate for the U. S. Congress and therefore this case falls under the aegis of the New York Times rule of libel.

Petitioner submits that *all* of the *Louisiana* cases *with Louisiana citations, cited by the Trial Judge,* in his written reasons for judgment, (p. 19), *were prior* to the extension of the libel and slander doctrines established by the U. S. Supreme Court and extended even further in the Louisiana case of *Thompson v. St. Amant,* 390 U.S. 727, 20 L.Ed.2d 262, 88 Sup.Ct. 1323, decided by the U. S. Supreme Court, *April 29, 1968.*

Likewise, the District Judge cites *Belli v. Orlando Daily Newspaper, et al.,* 389 Fed.2d 579. This was not a decision by the United States Supreme Court but was a decision of the United States Circuit Court of Appeal and was decided in 1967 which was prior to the *Thompson v. St. Amant (supra)* case. Without question, the doctrine of *all of these libel and slander cases,* established by all of these United States Su-

preme Court libel and slander decisions, especially in the *New York Times* case, *(supra)*, and in the *Thompson v. St. Amant* case, *(supra)*, rule out the actual malice exception. Actual malice according to this doctrine cannot be presumed, and must be set out by most convincing clarity. This doctrine even holds that the inability to prove the truth of a defamatory statement does not in itself establish actual malice.

In a case, decided in California, *Noonan v. Rousselot*, 48 California Reporter 817, (1966) the facts are somewhat similar, the Court held:

> "That allegations that defendants acted wickedly and maliciously, that tabloid was distributed by them for express purpose of injuring plaintiff and causing his defeat in primary election and that alleged libels were false, malicious and unprivileged and were calculated to and did expose plaintiff to hatred, contempt, ridicule and obloquy, causing him to be shunned and avoided failed to allege actual malice thereby rendering counts for conspiracy and libel insufficient."

In this case, unlike the present case, Noonan, the plaintiff and candidate lost the election to the defendant, Congressman Rousselot who was reelected.

In the *Noonan* case, the trial court sustained defendant's demurrer which is similar to Louisiana's exceptions of no cause or right of action. The appellate court affirmed the lower court's decision.

The Court in the *Noonan* case said under paragraph 6, page 821 of 49 California Reporter:

> "We hold therefore that unless defendants acted with malice, as defined in the *New York Times Co. v. Sullivan (supra)*, plaintiff does not have a cause of action."

In the *Noonan v. Rousselot* case, *(supra)*, the plaintiff alleges practically the same allegations of malice as respondent does in the case at bar, and actually goes even further in the allegations of malice.

In the *Noonan* case, the plaintiff alleged:

> " 'The tabloid was distributed for the express purpose of injuring plaintiff and causing his defeat' and that the alleged libels were 'false, malicious and unprivileged and were calculated to and did expose the plaintiff to hatred, contempt, ridicule and obloquy, causing him to be shunned and avoided.' Also the charge of 'malice, oppression and fraud', also the allegation that defendants 'did not act in good faith but for the sole purpose of arousing hatred and ill will against the plaintiff and to deprive him of his constitutional right to seek public office in a free and fair election'."

With all of these allegations set forth above the court held that they, (the pleadings) did not constitute *malice* as set forth in the *New York Times Co. v.*

Sullivan case, *(supra)*. Like in the case at bar, plaintiff Noonan alleged a conspiracy. Certainly, if these allegations did not set forth the actual malice doctrine of the *New York Times Co. v. Sullivan* case, *(supra)*, then the like or similar allegations in the case at bar certainly do *not either*.

Petitioner would like to point out that in the respondent's petition he bases his entire claim of libel on two publications: One as set forth in allegations No. 4 and No. 6, (Record p. 6) and the other in allegations No. 7 (Record p. 7). Also attached to the respondent's petition were 7 interrogatories for the defendant (petitioner herein) to answer (Record p. 12). The petitioner has answered these interrogatories (Record p. 31), and by these answers (p. 42) petitioner has eliminated any responsibility for respondent's alleged claim of libel and slander.

The wording of the respondent's petition (p. 29) makes it clear that there is absolutely no showing of malice or that the petitioner acted with a reckless disregard of whether the alleged material was false or not. There are absolutely no facts in respondent's petition to support these ultimate conclusions. According to respondent's petition as applied to the doctrine of the *New York Times Co. v. Sullivan* case, *(supra)*, there was no cause or right of action alleged or stated.

Additionally, it is submitted that even if the petition stated a cause of action, respondent has no right

of action. In paragraph fourteen of his petition, respondent alleges damage to his earning potential and public stature. Since respondent won the election how can he be damaged? Clearly the respondent enjoys more public stature today than he did when he was a candidate for Congress. He is now one of a very select few, a United States Congressman. The Court will also recognize that the compensation and emoluments of the office of a Congressman are far greater than that enjoyed by respondent prior to the time of the alleged slander. Above and beyond all of this, the respondent has admitted in his deposition, (Record p. 51) that any damage he might have sustained "would only be speculative," and that he couldn't "put it down in dollars and cents." Therefore, it is respectfully submitted that even if the petition states a legal cause of action, the respondent has no right of action, for by his own admission he has suffered no ascertainable damage. In fact, his financial situation, as a result of the political campaign, wherein the alleged wrongful conduct of libel and slander occurred has been significantly improved.

In answer to the interrogatories requested by petitioner, (p. 44) respondent gave the following information for his total income of 1966 and 1967 by filing copies of his 1966 and 1967 income tax return showing the following: (Record pp. 143 and 153.)

> "Plaintiff's total income for 1966—$13,886.77." (p. 48.)

"Plaintiff's total income for 1967—$27,333.33." (p. 49.)

Respondent's petition alleged that the libel occurred in *August, 1966* (Record p. 6). How could respondent have suffered any financial damages or loss, if according to his own admission, by his 1966 income tax return, he reported a total income for *1966* of $13,886.77, whereas in *1967*, he reported (by his 1967 income tax return) almost *twice* that amount, the sum of $27,333.33? The answer is clear that he *not* only did *not* suffer any damages, but reported almost *twice* as much income in the following year of 1967.

WHEREFORE, petitioner respectfully prays that this petition be granted and that a writ of certiorari issue, directed to the Supreme Court for the State of Louisiana, the First Circuit Court of Appeals of the State of Louisiana and the 20th Judicial District Court of Louisiana, commanding these Courts to certify and send to this Honorable Court, for its review and determination, a full and complete transcript and record of all proceedings on the cause entitled "John R. Rarick versus James H. Morrison" and reverse title, bearing Number 49,466 on the docket of the Supreme Court for the State of Louisiana, to the end that the judgment and opinion of said Court may be reversed by this Honorable Court.

Petitioner further prays for such other and further relief in the premises as this Court may deem proper and just.

.....

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TALLEY, ANTHONY, HUGHES & KNIGHT,
322 Columbia Road,
Bogalusa, La.,

.....

SAM ZELDEN, ESQ.,
ZELDEN & ZELDEN,
1051 National Bank of Commerce Bldg.,
New Orleans, Louisiana.

CERTIFICATE.

I, the undersigned, counsel for petitioner, hereby certify that I have served a copy of the foregoing petition upon Jack Rogers, Attorney for respondent, at Suite 840, Commerce Building, Baton Rouge, Louisiana, by mailing a copy thereof, postage prepaid, to him at said address.

.....

BASCOM D. TALLEY, JR.,
Attorney for Petitioner.

APPENDIX A.

NUMBER A-7848

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

JOHN R. RARICK,
Plaintiff,

versus

JAMES H. MORRISON, ET AL.,
Defendant.

PEREMPTORY EXCEPTION.

Now into Court through undersigned Counsel, comes James H. Morrison, a defendant, appearing solely for the purpose of this exception and excepts to the plaintiff's suit and petition on the following grounds:

I.

The plaintiff's petition discloses no cause of action.

II.

The plaintiff has no right of action against defendant, James H. Morrison.

WHEREFORE, exceptor prays that this exception be maintained and that plaintiff's suit be dismissed.

SAM MONK ZELDEN,
TALLEY, ANTHONY, HUGHES
KNIGHT,
By BASCOM D. TALLEY, JR.,
(Bascom D. Talley, Jr.),
Attorneys for Defendant
James H. Morrison,
322 Columbia Street,
Bogalusa, Louisiana
70427.

CERTIFICATE.

I hereby certify that a copy of the above and foregoing exceptions has this date been served on the attorney of record by depositing same in the United States mail.

Bogaulsa, Louisiana, this 22nd day of July, 1967.

BASCOM D. TALLEY, JR.,
(Bascom D. Talley, Jr.).

APPENDIX B.

NUMBER A-7848

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

JOHN R. RARICK,

versus

JAMES H. MORRISON, ET AL.

JUDGMENT.

This hearing on Exceptions of No Right and No Cause of Action came on this date according to previous assignment.

Present in Court were: Mr. Jack Rogers, Attorney at Law for Plaintiff John R. Rarick and Bascom Talley, Attorney at Law for Defendant Morrison.

After hearing arguments of counsel and considering the briefs filed by opposing counsel, and the law and the evidence being in favor thereof for written reasons assigned:

IT IS ORDERED, ADJUDGED, AND DECREED that the Exceptions of No Right and No Cause of Action are overruled.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that the Defendant shall have ten (10) days from this date in which to file his answer, as provided by Article 1001, second paragraph Louisiana Code of Civil Procedure.

JUDGMENT READ, RENDERED, AND SIGNED in Open Court, Clinton, Louisiana this 27 day of May, 1968.

(S.) WILLIAM T. BENNETT,
(William T. Bennett),
Judge.

APPENDIX C.

NUMBER A-7848

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

JOHN R. RARICK,

versus

JAMES H. MORRISON, ET AL.

REASONS FOR JUDGMENT ON EXCEPTION OF NO CAUSE OF ACTION AND NO RIGHT OF ACTION.

This is a suit for damages against defendant, James H. Morrison, and other defendants not specifically named by plaintiff, seeking a money judgment for alleged damages resulting from the publication of material alleged to have been libelous. The alleged libel occurred during a political campaign in which the plaintiff opposed the defendant for election to Congress. The defendant Morrison was the incumbent and was defeated by the plaintiff.

The defendant Morrison has filed Peremptory Exceptions objecting to the petition in that it states neither a cause of action nor a right of action.

This matter comes before the Court today for the limited purpose of a hearing on these exceptions.

For the purpose of considering the Exception of No Cause of Action, it is well settled under our law that all well pleaded facts of plaintiff's petition are taken as being admitted by the defendant.

Considering first the Exception of No Right of Action, there can be little doubt that it is totally without foundation. It is well settled in our jurisprudence that the Exception of No Right of Action addresses itself to the alleged lack of interest on the part of plaintiff in the subject matter of the litigation. LSA-C.C.P. Art. 927, Riche v. Ascension School Board, La. App. 200 So. 681; Dyer v. Davis, 189 So. 2d 678.

Plaintiff having alleged he was libeled by the publications by defendant and suffered damages as a result, therefore, has clearly shown an interest in the subject matter of this litigation, which is his asserted right to damages for the libel which he urges has been committed to his detriment. (Dyer case.)

Defendants' Exception of No Cause of Action is likewise without merit as will appear from a reading of the entire opinion in the Dyer case. The Dyer case was cited by defendants as authority for sustaining his exception. Actually, in my opinion, the Dyer case is authority for overruling the Exceptions of No Right or Cause of Action rather than sustaining them. In the Dyer case, Exceptions of No Right and No Cause of Action were filed by defendant. Both Exceptions were overruled by the Trial Court. The Court of Appeals sustained the ruling (although on different

grounds) and Certiorari was denied by the Supreme Court of Louisiana. It was contended on appeal in the Dyer case that the Exception should be sustained because plaintiff, quote:

> "failed to allege the purported libel was committed with 'actual malice'—does not aver a case within the ambit of the Times and Garrison cases. . . and therefore fails to state a cause of action for which plaintiff may obtain relief in the courts. The trial court, however, overruled defendant's exception of no cause of action on the ground that the cases relied upon by defendant apply only to persons *in public office* and therefore did not obtain in the present matter which concerns a *candidate for public office.* In so concluding, we think our learned brother below reached the proper result but on the improper basis."

The Court then quoted from the petition wherein the plaintiff Dyer alleges a conspiracy between the defendants in the publication of allegedly offensive matter and in which he alleged in substance that the alleged conspiracy was deliberate, willful, false, and malicious. The Court then said:

> "For the purpose of disposing of the Exception of No Cause of Action, it suffices to state the allegations noted bring the case within the rule of the New York Times decision, supra, which in effect holds that as regards *public officials*, to be

> actionable a libel must be with 'actual malice', which means it must be knowingly false or made with reckless disregard of whether it was false or not. The essence of the verbiage chosen by plaintiff to state his case is what determines whether he has in fact stated a cause of action. The language employed in the case at bar in substance charges actual malice in that it alleges a deliberate and willfully false statement, the equivalent of knowingly false. We hold, therefore, the petition *states a cause of action in law.*" (Emphasis supplied.)

In the present case before this Court, it is alleged throughout plaintiff Rarick's petition that it was defamatory, deliberately false, and malicious; and, specifically, in paragraph four the following allegations are noted:

> ". . . .which newspaper contained a large amount of material which was totally false, untrue, and maliciously libelous to petitioner and which material was, in fact, published and distributed by defendants herein with actual malice toward petitioner and with full knowledge that the said material was false or alternative was reckless disregard as to whether it was false or not, and further, said material was published by defendants directed and specifically intended to injure, harm, and embarrass petitioner personally."

The Dyer case interpreted and applied, the Times and Garrison cases, and specifically extended the rule in those cases to apply to candidates for public office as well as to public office holders.

In the most recent Federal case on this point, Melvin M. Belli v. Orlando Daily Newspapers, Inc., et al., 389 F.2d 579, decided December 28, 1967, the United States Fifth Circuit Court of Appeal in reversing a Federal District Court in Florida which had dismissed plaintiff's petition for libel without trial on the merits said:

> "The Supreme Court in New York Times Co. v. Sullivan required 'convincing clarity' of the *proof* presented to show *actual malice* 376 U.S. at 285-86 (and found it lacking in that case); however, this requirement extends only to the *proof* required to meet the constitutional demands. As to the *complaint,* (petition), the Federal Rules of Civil Procedure require only that 'Malice, intent, knowledge, and other condition of mind of a person' . . . be *averred* generally. Rule 9(b)". (Emphasis supplied.)

> "Belli charged the defendants with *actual malice'* in publication of the allegedly libelous article. This charge then, is sufficient on its face to establish a basis for a showing of actual malice by defendants in perpetration of the alleged libel, as required by the New York Times decision." (Emphasis supplied.)

The Court then referred the *Belli* case back to the District Court for trial.

In the present case Rarick charges Morrison with "actual malice" in publishing of the allegedly libelous articles. This charge is sufficient on its face to establish a basis for a showing before a jury, since a jury has been prayed for and granted to the plaintiff, of actual malice by the defendant in perpetration of the alleged libel as required by the New York Times decision, the Garrison case and the Dyer case, and more recently by the case of Thompson v. St. Amant, 88 S.Ct. 1323.

In overruling Defendant's Exceptions in this case, this Court is also following the ruling of the Supreme Court of Louisiana in Fontenot v. Fontenot, 235 La. 488 104 So. 2d 431 in which the District Court dismissed a suit in slander on an Exception of No Cause of Action. In reversing the decision of the lower court, the Supreme Court of Louisiana said:

> "In Mundy v. Gentilly Oaks, 227 La. 118, 78 So. 2d 530, 533 a charge of libel and slander was held by the district court to *state no cause of action.* We overruled the exception, being of the opinion that 'while the mentioned statements are not slanderous per se, plaintiff has specifically alleged that they were false and were made maliciously with resultant injury to his personal and business reputation. These allegations, under our jurisprudence, are sufficient for stating

a cause of action. . . .' Fellman v. Dreyfous, 47 La. Ann. 907, 17 So. 422; New Iberia Extract of Tobasco Pepper Co. v. E. McIllhenny's Son, 132 La. 149, 61 So. 131; Vicnair v. Daily States Publishing Co., 153 La. 677, 96 So. 529. *Whether or not they can and will be proved is a question not presently before us.*" (Emphasis supplied.)

"(1) Martin v. The Picayune, 115 La. 979, 40 So. 376, 377, 4 L.R.A. N.S., 861, is authority for the proposition that doubt as to whether the petitioner states a cause of action in defamation should be resolved in favor of trial on the merits."

Further, the above cases were quoted with approval in the case of Dr. Anne Lazar v. Lionel Gremillion et al., 189 So. 2d 35, which was a suit for libel. In the Lazar case the trial court sustained an Exception of No Cause of Action filed by the defendants. The Court of Appeal, First Circuit, reversed the lower court and remanded the case for trial to the District Court stating in the concluding paragraph of the judgment:

"*We believe that the petitioner is entitled to her day in court.* It might well be true that, after a trial on the merits, it will be found that she is unable to sustain her position, however, this is a matter to be determined after evidence has been adduced upon trial on the merits." (Emphasis supplied.)

For reasons assigned the Exceptions of No Right or Cause of Action are overruled and judgment will be signed accordingly.

Clinton, Louisiana, this 27th day of May, 1968.

WILLIAM T. BENNETT,
(William T. Bennett),
Judge.

Filed this 27 day of May 1968.

A TRUE AND CORRECT COPY.

This 27 day of May 1968.

INEZ M. DURHAM,
East Feliciana Parish, Clerk of
Court, State of La.

APPENDIX D.

COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

No. 7583

JOHN R. RARICK,

versus

JAMES H. MORRISON, ET AL.

In Re James H. Morrison applying for writs of Certiorari, Prohibition and Mandamus to the Twentieth Judicial District Court, Parish of East Feliciana, Honorable William T. Bennett, Judge, presiding.

Writs refused: The ruling of the trial court is correct.

JULIAN E. BAILES,
PAUL B. LANDRY JR.,
Judges.

A TRUE COPY:

JOHN E. MILLER,
Clerk, Court of Appeal, First Circuit, State of Louisiana.

Filed Jul. 1, 1968.

APPENDIX E.

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

No. 49,466

JOHN R. RARICK,

versus

JAMES H. MORRISON, ET AL.

October 9, 1968

In re: James H. Morrison applying for writs of certiorari, prohibition or mandamus.

Writ refused. The exception having been overruled, the matter is not final. Applicant has a remedy by appeal in the event of an adverse ruling on the merits.

(S.) MEB.
(S.) JBF.
(S.) JBH.
(S.) EHMcC.
(S.) WBH.
(S.) JWS.
(S.) FWS.

A TRUE COPY.

Clerk's Office,
Supreme Court of Louisiana,
New Orleans.

October 9, 1968.

HAROLD A. MOISE, JR.,
Deputy Clerk.

APPENDIX F.

NUMBER A-7848

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

JOHN R. RARICK,

versus

JAMES H. MORRISON, ET AL.

TO THE HONORABLE THE 20TH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF WEST FELICIANA, STATE OF LOUISIANA:

The petition of John R. Rarick, a resident of the full age of majority of the Parish of West Feliciana, State of Louisiana, with respect represents that:

1.

Defendant James H. Morrison, a resident of the full age of majority of the Parish of Tangipahoa, State of Louisiana, John Doe, whose correct name, age and residence is unknown to petitioner but whom petitioner alleges on information and belief to be of the full age of majority and a resident of the State of Louisiana, and certain other defendants whose correct names, ages and residences are unknown to petitioner but who are alleged by petition-

er on information and belief to be of the full age or majority and residents of the State of Louisiana, acting in concert with and in a conspiracy with defendants James H. Morrison and John Doe, are justly and truly indebted, in solido, unto petitioner in the full and true amount of Five Hundred Thousand and No/100 ($500,000.00) Dollars, together with judicial interest thereupon from date of judicial demand until paid, for the following reasons:

2.

Petitioner, who is a candidate for the United States House of Representatives, has been the victim of certain vicious, malicious, cruel, false and illegal libels and slanders which petitioner respectfully alleges were instigated, procured and conspired for by defendant James H. Morrison, defendant John Doe and certain other defendants unknown to petitioner who were all acting in concert and in a conspiracy with defendants Morrison and Doe to carry out the acts complained of herein.

3.

The correct names, ages and residences of John Doe and the other unknown defendants herein are well known to defendant Morrison and peculiarly within his personal knowledge and petitioner desires and is legally entitled to have certain interrogatories, which are attached hereto and made a part hereof, answered by defendant Morrison so as to properly

name, cite and serve these various unknown defendants.

4.

On or about August 3, 1966, in the Parish of East Feliciana, and elsewhere through the 6th Congressional District of Louisiana, defendants herein acting in concert with and in a conspiracy, caused to be published and did publish and distribute, through the United States Mails and otherwise, a four page tabloid size newspaper, labeled "6th District Good Government News," datelined "Volume II, 6th Congressional District of Louisiana, August, 1966" a copy of which is attached hereto and made a part hereof as if copied in extenso, which newspaper contains a large amount of material which is totally false, untrue and maliciously libelous as to petitioner and which material was in fact published and distributed by defendants herein with actual malice toward petitioner and with full knowledge that said material was false or alternatively with reckless disregard of whether it was false or not, and further, said material was published by defendants directed and specifically intended to injure, harm and embarrass petitioner personally.

5.

Said libelous material was published by defendants specifically naming and identifying petitioner personally and clearly contains a personal attack upon

petitioner and petitioner's personal conduct and reputation as an individual rather than solely a criticism of the past performance of petitioner's official duties as a public official.

6.

Among other libelous comments published by defendants in the aforesaid material, it contains words describing petitioner and his personal conduct as follows:

"John R. Rarick Exposed as Member of KKK"

"Joined Ku Klux Klan at St. Francisville in 1963"

"Became Ku Klux Klan Exalted Cyclops in 1964"

"Rarick Betrayed People When He Joined Ku Klux Klan."

"Judge Ben N. Tucker Amazed to find Rarick's Klan Paraphernalia LEFT BEHIND

"St. Francisville, La. It has been hush, hush, but it's out in the open now because in May, when John R. Rarick, THE KLAN'S MAN FROM INDIANA, resigned, as Judge, to run for Congress he did not clean out the Judge's office, nor his chambers or closets. It was not a case of finding skeletons, but it was a case of finding a burned out fiery cross, a great deal of KKK paraphernalia, some secret Klan documents,

some home-made flare bombs and home-made hand grenades and a few other odds and ends of what it takes to operate as a real good, first-class, card-carrying Klansman.

"The most surprised man in America was not John Rarick, when he realized that he had forgotten a few of his Klan knickknacks, but it was Judge Ben N. Tucker of Hammond, ... "

7.

On page one of said newspaper, as will appear in the copy attached hereto and made a part hereof, there appears a picture of a person in a white robe and hood holding a burning cross, said picture being captioned "Is This the Way a Congressman Dresses?" above said picture and having below said picture the following words:

"In interviewing people about the coming election, one voter gave his reason for voting against Rarick, The Klan's Man From Indiana. 'I think the vast majority of folks ought to vote against Rarick, because if he was foolish enough, and mean enough, and hateful enough to join the Klan—He might be just foolish enough to wear a Klan's costume (like the one above) when he took his seat in Congress, if he, by a miracle, was elected (he won't be however).' To add a further comment, both Rarick and the Klan's robes are therefore safe from getting on the floor of Congress."

all of the above, including the described picture, being libelous as to petitioner.

8.

On page 3 of said newspaper, as will appear in the copy attached hereto and made a part hereof, there appears a group of pictures covering the entire page, eight of them showing various persons dressed as Ku Klux Klansmen, and one picture, in the center of the page and surrounded by the other eight pictures, being a picture of the face of your petitioner, said page being captioned at the top, "What You See Below Is The—Ugly Mess Known as the Ku Klux Klan. You Can Do Something About It! By Voting Against The Ku Klux Klan Brand of Extremism on Saturday, August 13th." and captioned at the bottom of the page, "Pictured Above—Upper Left Is The Imperial Wizard, Robert Shelton of Tuscaloosa, Alabama. Near the Center You Can See John R. Rarick, The Klan's Man From Indiana. The Issue Is Clear-Cut—Law and Order Versus KKK Extremism. Vote For Jimmy Morrison, No. 8," all of which, pictures and captions combined, being libelous as to petitioner.

9.

The balance of the material in said newspaper, directly related therein to petitioner, specifically and by name, falsely alleges that petitioner is a member of the Ku Klux Klan and is by inference

guilty of crimes and bad conduct and is an unfit and unworthy person by virtue of said membership, which is, when taken in its entirety, libelous as to petitioner.

10.

The aforesaid newspaper was broadly distributed by defendants, sometimes even in duplicate, to all or practically all of the approximately 220,000 registered voters of the Sixth Congressional District of Louisiana, including all or practically all of the registered voters in the Parish of East Feliciana.

11.

Petitioner denies that he is now or ever has been a member of the "Ku Klux Klan" as falsely, maliciously and libelously alleged by defendants in the material described above.

12.

The above described newspaper, as will be seen in the copy attached hereto and made a part hereof, does not contain the name or names of the person or persons responsible for its publication or distribution, which is illegal and in fact is a felony under the provisions of Louisiana Revised Statutes Title 18, Section 1531, and because of the illegal nature of such a publication it is a gross aggravation of the libel described above and is in itself an illegal act directed against petitioner causing him serious damage.

13.

Defendants have further aggravated the damages suffered by petitioner by printing, publishing and distributing in the Parish of East Feliciana and elsewhere throughout the Sixth Congressional District of Louisiana, on or about August 5, 1966, a large number of small black cards, one of which is attached hereto and made a part hereof as if copied in extenso, bearing the picture of a person in a Ku Klux Klan hood, captioned at the top, "John R. Rarick," and at the bottom, "The 'Klan-Man' From Indiana Wants Your Vote For U. S. Congress," which card is also a criminal violation of Louisiana Revised Statutes Title 18, Section 1531, as it contains no name or address of the person or persons who published and distributed it, as will appear on the card attached hereto, and said card is both an illegal act directed against petitioner and a libel as to petitioner, both causing him serious damage.

14.

As a direct and proximate result of the aforesaid libelous publication and illegal acts by defendants herein, petitioner has suffered irreparable, permanent and serious damage, both presently and in the future, to his personal reputation, earning potential and public stature and has been subjected thereby to serious extensive pain, suffering and mental anguish at seeing his reputation so destroyed and the resulting harm to himself and his family, and petitioner has been damaged thereby in the full and true amount of Five Hundred Thousand and

No/100 ($500,000.00) Dollars for which amount defendants are liable, in solido, unto petitioner.

15.

Petitioner fears that defendants James H. Morrison, John Doe and various other defendants acting in concert and in a conspiracy with defendants Morrison and Doe will continue to publish similar illegal libelous material directed against petitioner, causing him further irreparable injury and damage, and petitioner desires and is legally entitled to a temporary restraining order, a preliminary and a permanent injunction against defendants James H. Morrison and John Doe and all other defendants and persons acting in concert with or in a conspiracy with said defendants Morrison and Doe, restraining, enjoining and prohibiting them and all of them from doing any act to further libel or damage petitioner by publication or any other means, legal or illegal.

16.

Petitioner desires, is legally entitled to, and requests a jury trial.

WHEREFORE, petitioner respectfully prays that defendants herein be served with copies of this petition and the attached interrogatories and duly cited to appear and answer same, and also that defendant be duly cited to answer the interrogatories attached hereto and made a part hereof, under oath, in writing, and categorically in the manner fixed by law, and after legal delays and due proceedings had, that there be judgment herein in favor of petitioner

John R. Rarick and against defendants James H. Morrison, John Doe and the various other defendants acting in concert with and in a conspiracy with defendants James H. Morrison and John Doe, their names being unknown to petitioner at this time, said judgment being rendered in solido against all defendants in the full and true amount of Five Hundred Thousand and No/100 ($500,000.00) Dollars, together with legal interest at the rate of 5% per annum from date of judicial demand until paid, and for all costs of this suit.

Petitioner further prays that a temporary restraining order, a preliminary and a permanent injunction be issued and granted herein restraining, enjoining and prohibiting defendants James H. Morrison, John Doe, and the various other defendants herein whose names are at this time unknown to petitioner and who are acting in concert with or in a conspiracy with defendants Morrison and Doe, from doing any act to further libel or damage petitioner by publication or any other means, legal or illegal.

Petitioner finally prays for a jury trial of all issues and general and equitable relief.

By Attorneys:

ROGERS AND CASKEY,
840 Commerce Building,
Baton Rouge, La.,
By JACK N. ROGERS,
(Jack N. Rogers).

ORDER.

The foregoing petition being considered,

LET a trial by jury be had in this case upon plaintiff posting a bond for costs in the amount of One Thousand and No/100 ($1000.00) Dollars.

New Roads, Louisiana, this 9th day of August, 1966.

ROSS KEARNEY, JR.,
Judge, 20th Judicial District
Court.

Filed This 10 day of Aug., 1966.

NUMBER A-7848

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

JOHN R. RARICK,

versus

JAMES H. MORRISON.

INTERROGATORIES TO BE ANSWERED CATEGORICALLY AND UNDER OATH, IN WRITING, WITHIN FIFTEEN (15) DAYS FROM DATE OF SERVICE BY:

JAMES H. MORRISON, DEFENDANT HEREIN

Interrogatory No. 1.

List the names and addresses of any and all members, officers and employees of the "Good Government League Committee" known to you.

Interrogatory No. 2.

State the name and address of the person or persons holding U. S. Bulk Postage Permit No. 16, in Port Allen, Louisiana.

Interrogatory No. 3

State the names and addresses of any and all persons known to you to have written, printed, edited, composed, typeset, photographed, mailed or distributed any of the material, pictures, captions or articles contained in Volume II, "6th District Good Government News," dated August, 1966, or any finished copies of said newspaper.

Interrogatory No. 4.

State the names and addresses of any and all persons known to you to have contributed any funds toward the publication of Volume II, "6th District Good Government News," dated August, 1966.

Interrogatory No. 5.

State categorically whether or not you supplied the mailing list used in the mailing of "6th District Good Government News" dated August, 1966, and the name and address of the person or persons to whom you supplied said mailing list.

Interrogatory No. 6.

State the names and addresses of all persons whom you have authorized in the last six months to use the picture of yourself and your family which appears on page one of Volume II, "6th District Good Government News," dated August, 1966.

Interrogatory No. 7.

State the names and addresses of any and all persons known to you to have written, printed, photographed, reproduced or distributed copies of a small black card containing the picture of a person in a white hood and the words "John R. Rarick, The 'Klan-Man' From Indiana Wants Your vote for U. S. Congress," plus the names and addressed of any and all persons known to you to have contributed any funds toward the printing or distribution of said cards.

By Attorneys:

ROGERS AND CASKEY,
840 Commerce Building,
Baton Rouge, La.,
By JACK N. ROGERS.

APPENDIX G.

NUMBER A-7848

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

JOHN R. RARICK,

Plaintiff,

versus

JAMES H. MORRISON, ET AL.,

Defendant.

ANSWERS TO INTERROGATORIES.

Now into court comes James H. Morrison, defendant in the above entitled and numbered cause, and for answer to the interrogatories propounded herein by plaintiff says:

I.

Answering Interrogatory Number 1, not known.

II.

Answering Interrogatory Number II, not known.

III.

Answering Interrogatory Number III, not known.

IV.

Answering Interrogatory Number IV, not known.

V.

Answering Interrogatory Number V, no.

VI.

Answering Interrogatory Number VI, no one.

VII.

Answering Interrogatory Number VII, not known.

I did not knowingly participate in solicitation of any votes for John Rarick.

JAMES H. MORRISON.

State of Louisiana,
Parish of Washington,

Before me, the undersigned authority, personally came and appeared James H. Morrison, who being first duly sworn, deposed and said that he is the defendant in the above captioned cause, that the above and foregoing answers to the interrogatories on facts and articles propounded to him by plaintiff herein are true and correct.

JAMES H. MORRISON.

Sworn to and subscribed before me this 1st day of November, 1967.

BASCOM D. TALLEY, JR.

APPENDIX H.

Filed: This 26 day of March, 1968, Inez M. Durham, East Feliciana Parish, Clerk of Court, State of La.

A TRUE AND CORRECT COPY: This 15 day of April, 1968, Inez M. Durham, East Feliciana Parish, Clerk of Court, State of La.

NUMBER A-7848

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

JOHN R. RARICK,

versus

JAMES H. MORRISON, ET AL.

MOTION.

On motion of James H. Morrison, a defendant in the above entitled and numbered cause, and upon suggesting to the Court,

I.

The plaintiff, John R. Rarick, has in his possession, custody and control documents and papers, not privileged, which constitute or contain evidence relating to plaintiff's alleged cause of action and the damages allegedly sustained in the above entitled and numbered cause, consisting of the following:

1. Federal income tax returns and all supporting schedules relating thereto of plaintiff, John R. Rarick, for the years 1963, 1964, 1965, 1966, and 1967.

2. Louisiana income tax returns and all supporting schedules relating thereto for the years 1963, 1964, 1965, 1966 and 1967.

3. Ledgers, journals, checkbooks, cancelled checks and other financial records forming the basis for the information contained in the tax returns described in 1 and 2 above.

II.

It is necessary that mover have the privilege of examining the said documents prior to the trial of this cause for the purpose of enabling him to prepare for the trial of the said cause, particularly as it relates to the alleged damages sustained by the plaintiff in this matter.

III.

It is therefore necessary that this Honorable Court order the said John R. Rarick to produce and permit on the .... day of April, 1968, at the office of Janet Parker, Louisiana Ntl. Bank Bldg., Baton Rouge, La., the inspection, copying or photographing by and on behalf of mover, James H. Morrison, of the books, papers and documents referred to above.

IT IS ORDERED BY THE COURT that John R. Rarick be and he is hereby ordered to produce and permit the inspection, copying and photographing by James H. Morrison, a defendant in the above cause, of the following books, papers and documents:

1. Federal income tax returns and all supporting schedules relating thereto of plaintiff, John R. Rarick, for the years 1963, 1964, 1965, 1966 and 1967.

2. Louisiana income tax returns and all supporting schedules relating thereto for the years 1963, 1964, 1965, 1966 and 1967.

3. Ledgers, journals, checkbooks, cancelled checks and other financial records forming the basis for the information contained in the tax returns described in 1 and 2 above.

Clinton, Louisiana, the .... day of March, 1968.

.....
Judge.

SAM MONK ZELDEN,
TALLEY, ANTHONY, HUGHES
& KNIGHT,
By BASCOM D. TALLEY, JR.,
(Bascom D. Talley, Jr.),
322 Columbia Street,
Bogalusa, La. 70427,
Attorneys for Mover.

State of Louisiana,
Parish of Washington.

BEFORE ME, the undersigned authority, personally came and appeared:

BASCOM D. TALLEY, JR.,

who after being duly sworn did depose and say:

That he is one of the attorneys of record in the above entitled and numbered cause and that all allegations of fact contained in the above and foregoing motion are true and correct to the best of his knowledge, information and belief.

BASCOM D. TALLEY, JR.,
(Bascom D. Talley, Jr.).

Sworn to and subscribed before me this the 22 day of March, 1968.

RICHARD KNIGHT,
Notary Public.

APPENDIX I.

Form 1040 U.S. Individual Income Tax Return 1966

for the year January 1–December 31, 1966, or other taxable year beginning ..... 1966, ending ..... 19..... U.S. Treasury Department—Internal Revenue Service

Please print or type

John R. & Marguerite G. Rarick
Box 236
St. Francisville, La.

Your social security number (Husband's, if joint return): 312 18 6242

Your occupation: District Judge Member of Congress

Wife's number, if joint return: 439 24 8058

Enter the name and address used on your return for 1965 (if the same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1965 names and addresses.

Wife's occupation: Housewife

Your present employer and address: U.S. Government, Washington D.C.

Wife's present employer and address, if joint return: Ne. as above and % Rm 1317 H.O.B., Washington D.C.

Filing Status—check only one:

1a ☒ Single
1b ☐ Married filing joint return (even if only one had income)
1c ☐ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number.
1d ☐ Unmarried Head of Household
1e ☐ Surviving widow(er) with dependent child

Exemptions

	Regular	65 or over	Blind	Enter number of exemptions checked
2a Yourself	☒	☐	☐	
2b Wife	☒	☐	☐	2

3a First names of your dependent children who lived with you: John R. II, Carolyn Cherie, Laura Lee — Enter number ▶▶▶ 3

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed ▶▶▶ 5

Attach Copy B of Form W-2 here

Income (If joint return, include all income of both husband and wife)

5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation ▶	4,896	78
6	Other income (from page 2, Part II, line 8) ▶	8,939	99
7	Total (add lines 5 and 6)	13,886	77
8	Adjustments (from page 2, Part III, line 5) ▶	None	
9	Total income (subtract line 8 from line 7) ▶	13,286	77

Figure tax by using either 10 or 11

10 Tax Table—If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.

Tax Computation

11 Tax Rate Schedule—

11a If you itemize deductions, enter total from page 2, Part IV. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately). ▶ 2,362 18

11b Subtract line 11a from line 9 — 11,524 59

11c Multiply total number of exemptions on line 4, above, by $600 — 3,000 00

11d Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12. — 8,524 59

Tax Credits Payments

12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see line 11) ▶	1,495	41
13	Total credits (from page 2, Part V, line 5) ▶	None	
14a	Income tax (subtract line 13 from line 12)	1,495	41
14b	Tax from recomputing prior year investment credit (attach statement)	None	
15	Self-employment tax (Schedule C-3 or F-1) ▶	None	
16	Total tax (add lines 14a, 14b, and 15) ▶	1,495	41
17	Total Federal income tax withheld (attach Forms W-2) ▶ 490 00		
18	1966 Estimated tax payments (include 1965 overpayment allowed as a credit) ▶ None		
19	Excess F.I.C.A. Tax Withheld (two or more employers—see page 5 of inst.) ▶ None		
20	Nonhighway Federal gasoline tax—Form 4136, Reg. Inv.—Form 2439 None		
21	Total (add lines 17, 18, 19, and 20)	490	00

Tax Due or Refund

22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return ▶	1,005	41
23	If payments (line 21) are larger than tax (line 16), enter Overpayment ▶▶▶	None	
24	Amount of line 23 you wish credited to 1967 Estimated Tax	None	
25	Subtract line 24 from 23. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	None	

Attach Check or Money Order here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ▶ _____ Date _____

If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

Sign here _____ Date _____

Signature of preparer other than taxpayer. Address

668—16—79301-8

Form 1040 U.S. Individual Income Tax Return

U.S. Treasury Department, Internal Revenue Service — for the year January 1–December 31, 1967, or other taxable year beginning Jan. 1, 1967, ending Dec. 31, 19 67

1967

Please print or type

First name and initial (If joint return, use first names and middle initials of both): John. R. and Marguerite G.

Last name: RARICK

Your social security number: 312 | 18 | 6242

Home address (Number and street or rural route): 7370 Airline Highway

Your occupation: Congressman

City, town or post office, and State: Baton Rouge, Louisiana

ZIP code

Spouse's social security number: 439 | 24 | 8058

Enter below name and address used on your return for 1966 (if same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1966 names and addresses.

Your present employer and address: Box 236, St. Francisville, Louisiana

Spouse's occupation: Housewife

Spouse's present employer and address, if joint return: U.S. Government, Washington, D. C. Unemployed.

Your Filing Status—check only one:

1a ☐ Single

1b ☒ Married filing joint return (even if only one had income)

1c ☐ Married filing separately. If spouse is also filing a return, enter her (his) social security number in space provided above and give first name here .....

1d ☐ Unmarried Head of Household

1e ☐ Surviving widow(er) with dependent child

Your Exemptions

	Regular	65 or over	Blind	Enter number of boxes checked ▶
2a Yourself . . .	☒	☐	☐	2
2b Spouse . . .	☒	☐	☐	

3a First names of your dependent children who lived with you: Carolyn Charla, Laurie Lee — Enter number ▶ 2

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed . . . . . ▶ 4

Please attach Copy B of Form W-2 here

Income. If joint return include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation	5	27,333.33
	6	Other income (from page 2, Part II, line 8)	6	(450.00)
	7	Total (add lines 5 and 6)	7	26,883.33
	8	Adjustments to income (from page 2, Part III, line 5)	8	3,947.17
	9	Total income (subtract line 8 from line 7)	9	22,936.16
Find tax from table —OR—	10	If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.	10	
Figure tax using tax rate schedules	11a	If you itemize deductions, enter total from page 2, Part IV, line 17. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9; OR (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately).	11a	2,466.40
	11b	Subtract line 11a from line 9	11b	20,469.76
	11c	Multiply total number of exemptions on line 4, above, by $600	11c	2,400.00
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	11d	18,069.76
Your Tax, Credits, and Payments	12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see lines 11a–11d)	12	3,839.53
	13	Total credits (from page 2, Part V, line 4)	13	
	14a	Income tax (subtract line 13 from line 12)	14a	3,839.53
	14b	Tax from recomputing prior year investment credit (attach statement)	14b	
	15	Self-employment tax (Schedule C–3 or F–1)	15	
	16	Total tax (add lines 14a, 14b, and 15)	16	3,839.53
	17	Total Federal income tax withheld (attach Forms W-2)	17	5,077.44
	18	Excess F.I.C.A. tax withheld (two or more employers—see page 5 of instr.)	18	
	19	☐ Nonhighway Federal gasoline tax—Form 4136, ☐ Reg. Inv.—Form 2439	19	
	20	1967 Estimated tax payments (Include 1966 overpayment allowed as a credit)	20	
	21	Total (add lines 17, 18, 19, and 20)	21	5,077.44
Balance Due or Refund	22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return	22	
	23	If payments (line 21) are larger than tax (line 16), enter Overpayment	23	1,237.91
	24	Amount of line 23 you wish credited to 1968 Estimated Tax	24	
	25	Subtract line 24 from 23. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	25	1,237.91

Please attach Check or Money Order here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ▶ Your signature — Date

Spouse's signature (If filing jointly, BOTH must sign even if only one had income)

▶ Signature of preparer other than taxpayer — Date

Address

49

PREME COURT, U. S.

FILED

JAN 13 1969

JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1968

No. 905

JAMES H. MORRISON,

Petitioner,

versus

JOHN R. RARICK,

Respondent.

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BASCOM D. TALLEY, JR., ESQ.,
Talley, Anthony, Hughes & Knight,
322 Columbia Road,
Bogalusa, La.

SAM ZELDEN, ESQ.,
ZELDEN & ZELDEN,
1051 National Bank of Commerce Bldg.
New Orleans, La.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

No. 905

JAMES H. MORRISON,

Petitioner,

versus

JOHN R. RARICK,

Respondent.

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The supplemental petition of James H. Morrison, with respect shows unto the Honorable Court as follows:

I.

STATEMENT

On January 6, 1969, the above numbered petition was filed in this Honorable Court.

On January 3, 1969, the United States Court of Appeals, for the Fifth Circuit, rendered a decision in the case of Time, Inc. d/b/a "Life" versus Michael J. McLaney a/k/a Mike McLaney (see Appendix "A" P. 5) which case is as yet unreported.

The case held that plaintiff did not establish and prove actual malice, as laid down in the case of *New York Times Co. v. Sullivan*, 376 U.S. 254.

This decision also extended the actual malice doctrine of the Times v. Sullivan case to be extended to individuals, not associated with any government, or not candidates engaged in a political campaign, if those individuals are involved in matters of public concern.

In the Time, Inc. v. McLaney case the opinion begins, "We are here presented with an unusual appeal, since it has heretofore hardly ever fallen to the lot of this court to consider an appeal from the *denial* by the trial court of a motion for summary judgment. . . ." and ends as follows, "The judgment denying motion for summary judgment is REVERSED and the case is REMANDED to the district court with directions that a summary judgment for the defendant be entered."

II.

ARGUMENT

Petitioner respectfully submits that the Time, Inc. v. McLaney (supra) decision is similar to the case at bar, with the difference, that the lower court is a state

court rather than a federal district court and the ruling in this case at bar, is based on a judgment, denying an exception of no cause or right of action, rather than a judgment denying a motion for a summary judgment.

It is submitted that both an exception of no cause or right of action and a motion for a summary judgment when denied, are similar in that neither is a final judgment, but an interlocutory judgment.

It is submitted that, assuming the correctness of the Time, Inc. v. McLaney, decision, which seems to extend the doctrine laid down by this Honorable Court in the Times v. Sullivan case, then your petitioner respectfully represents that he is entitled to a writ of certiorari based on the lower court's record and the original petition heretofore filed.

WHEREFORE, Petitioner respectfully prays that this supplemental petition be filed; and petitioner reiterates the prayer of his original petition.

Petitioner further prays for such other and further relief in the premises as this Court may deem proper and just.

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CERTIFICATE

I, the undersigned, counsel for petitioner, hereby certify that I have served a copy of this foregoing supplemental petition upon Jack Rogers, Attorney for respondent, at Suite 840, Commerce Building, Baton Rouge, Louisiana, by mailing a copy thereof, postage prepaid, to him at said address.

BASCOM D. TALLEY, JR.,
Attorney for Petitioner.

APPENDIX A
IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 25585

TIME, INC., d/b/a "LIFE,"
Appellant,

versus

MICHAEL J. McLANEY, a/k/a MIKE McLANEY,
Appellee.

Appeal from the United States District Court for the Southern District of Florida

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(January 3, 1969)

Before BROWN, Chief Judge, TUTTLE, Circuit Judge, and FISHER, District Judge.

TUTTLE, Circuit Judge: We are here presented with an unusual appeal, since it has heretofore hardly ever fallen to the lot of this court to consider an appeal from the *denial* by the trial court of a motion for summary judgment. Prior to the adoption by the Congress of the 1958 Amendment to 28 U.S.C.A. §1292, by adding Section (b), no appeal could be taken from such an order by the trial court because it was not a "final order."

Now, however, this court has jurisdiction to entertain such an appeal when the provisions of Section (b) are complied with.[1]

Here the trial court made the required certificate and this court, on December 7, 1967, entered its order granting the application provided for under Section 1292 (b).

At the outset, it may be appropriate to sound a caveat with respect to the action taken by this court in granting the application for interlocutory appeal, lest every unsuccessful litigant in the trial court should consider this action as a precedent requiring or even suggesting the advisability of seeking such an interlocutory appeal upon the *denial* by the trial court of his motion for summary judgment. The subject matter of this litigation, involving, as it does, the very serious and timely question of how far the First Amendment guarantee of freedom of the press may still be impinged upon by actions for libel, places some cases in a somewhat different category. This follows when the trial court and this court jointly consider that the failure to dismiss a

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[1] 28 U.S.C.A. §1292(b): "When a district judge, in making in a civil action an order not otherwise appealable under this Section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order; provided, however, that application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the court of appeals, or a judge thereof, shall so order."

libel suit might necessitate long and expensive trial proceedings, which, if not really warranted, would themselves offend the principles enunciated in *Dombrowski v. Pfister,* 380 U.S. 479, because of the chilling effect of such litigation.

In this suit, in which the plaintiff demands a recovery of one million dollars actual and five million dollars punitive damages, and in which the plaintiff established a substantial record by taking depositions from several alleged sources of information relied upon by the publisher of the offending article, this court concluded that it would be appropriate to grant the request for an interlocutory appeal. This is appropriate because the Supreme Court has heretofore resolved, at the appellate level, in a number of cases, the question whether facts alleged and proved in the trial court met the standard laid down by it as to what nature of public official or public action would withdraw from a complaining party protection of the libel laws of the states absent a showing of "actual malice," and has also decided as a matter of law whether proof actually made upon the trial met that standard. See *New York Times Co. v. Sullivan,* 376 U.S. 254, *Associated Press v. Walker,* 388 U.S. 130 (considered by the Supreme Court in connection with the cited case of *Curtis Publishing Co. v. Butts,* 388 U.S. 130, and *St. Amant v. Thompson,* 390 U.S. 727.[2]

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[2]In the St. Amant case the trial court set aside that part of the jury verdict based on a claim for punitive damages, on the ground that punitive damages could be awarded only where "malice" had been proved. Thus the trial court excluded the issue of malice, based on the proof introduced to the jury.

We conclude, therefore, that there are before us two questions for consideration: (1) Do the constitutional guarantees of the First and Fourteenth Amendments deny recovery to the plaintiff in this case unless he can show that the appellant published statements about him with "actual malice"? (2) If so, does the record established by the plaintiff demonstrate that there is no issue of fact from which the jury could find "actual malice"?

In order to understand the basis for the plaintiff's claim of injury at the hands of the appellant, it is necessary to relate briefly the facts surrounding the publication of the article. We avoid repeating part of the factual recitation by dealing with the above two questions in reverse order.

The issue of Life Magazine for February 3, 1967, contained a fifteen-page article entitled "The Scandal in the Bahamas." The article was written by William Lambert and Richard Oulahan, but so far as this record is concerned the responsibility for its preparation falls on Lambert. The record discloses that Lambert was an associate editor of Life and a winner of the Pulitzer Prize for investigative reporting. He had started work on the article in the early fall of 1966. In connection with its preparation he called on the press officer of the Department of Justice, who referred him to a lawyer, Robert Peloquin, a member of the Organized Crime and Racketeering Section of the Department of Justice. During the course of this discussion, Peloquin told Lambert that gamblers who had formerly operated in Havana under the Batista regime had mov-

ed to the Bahamas. Included in the names mentioned by Peloquin was that of Mike McLaney. Peloquin stated that McLaney was "one of the Havana gamblers who had moved into the Bahamas at one time or another, and he was mentioned as having operated a casino at Cat Cay, and that was his [sic] — it was brushed over. It was relatively unimportant." Lambert made no notes of this conversation, and in the original writing of the article he made no mention of McLaney. However, he devoted a good deal of the article to discussing the influx of U.S. gangsters, paying particular attention to the activities of three men, Courtney, Ritter and Brudner, who were described as "three Lansky henchmen." Immediately preceding the paragraph that mentions the plaintiff the single time, is this language:

> "Courtney, Ritter and Brudner are all fugitives from the United States justice under indictment for violating the federal anti-racketeering statute as well as gambling tax evasion and failure to buy the annual $50 gambling stamp (they once operated the nation's largest bookie network, inherited from the late Frank Erickson)."

Then there follows the paragraph which is the subject matter of the lawsuit:

> "Whatever the Pindling government decides to do about these three gamblers, one of their colleagues has turned up in the midst of Pindling's party. He is Mike McLaney, who managed one of Havana's big casinoes in the days

> when Lansky was a top mobster in the Cuban capital. During the recent election campaign, McLaney showed up in the Out Islands, providing free airlifts for PLP candidates. The mob always tried to hedge its bets."

The thrust of the article was that with connivance of the officials, the Bahaman government was actually a puppet government controlled by the United Bahamian Party (UBP). It described Sir Stafford Sands as the principal power in UBP. It developed the thesis that Sands arranged for the development of Grand Bahama Island through the Grand Bahama Port Authority, Ltd., headed by Wallace Groves. According to the article gambling was introduced to boost tourism, and Lansky and his "mobsters" arrived with the acquiescence of Sands, Groves and the UBP.

The article then described the current election that ended January 10, 1967, by the election of Lynden Pindling, head of the predominantly Negro Progressive Liberal Party (PLP), as premier of the Bahamas and the rejection of Sands and the UBP. The article commented on the fact that in his campaign Pindling had made the presence of the gambling mob, notably Lansky's lieutenants, Courtney, Ritter and Brudner, his basis for attacking the existing government and its allies. The Life article described the Pindling campaign as an effort to rid the Bahamas of the Havana gambling group.

Lambert's article was practically completed at the time of the election on January 10th, at which time,

either a day or two before the election, or a day or two following it, (the two participants to the conversation disagree as to the time) a public relations man named McCrary, from whom Lambert had obtained some earlier reports about conditions in the Bahamas, called, according to Lambert's deposition, or was called and responded, with the information that McLaney had lent helicopters to Out Island candidates (Lambert's testimony identified these as candidates for the PLP party). McCrary also testified that in a telephone conversation, a man named Joe Abrell, told him that a man named Probinski had introduced the new Prime Minister Pindling to McLaney. In his testimony McCrary emphasized: "All of this [was] hearsay and during this period it was my purpose to run down rumors." He also testified that he reported to Lambert that he had heard a rumored story around town that McLaney had introduced Lansky to Groves and another that McLaney introduced Lansky to Sands.[3]

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[3]Since it is clear that the paragraph relating to McLaney originated entirely with McCrary's statement that McLaney was lending helicopters to assist in the Pindling campaign, the entire passage from his deposition relating to a possible connection between Lansky and McLaney is as follows:

"Q. Did you tell Mr. Lambert that Mr. McLaney introduced Lansky and Groves?

A. It was the story around. A story was spread around that presumably Sands and Bidwell (phonetically) — that Bidwell was Sands' man. A public relations guy for the Sands' party, whatever it was, U.B.P., or whatever it was. Among the stories was the fact that Mr. McLaney was working, and I was working for Chesler, going to bring Chesler back into power. That story was printed in the Miami Herald.

Q. Is it your testimony that a story appeared in the Miami Herald linking your name, Mr. McLaney's name and Chesler?

Lambert testified that upon receiving the report from McCrary that McLaney was assisting in the Pindling campaign, he recalled having previously heard McLaney's name as a Havana gambling operator and he searched the Life Morgue and checked information to ascertain whether this would disclose any connection between McLaney and other gamblers. Having found several articles that identified McLaney as being active in Havana gambling at the time Lansky was described as practically the partner of Batista in controlling gambling, he thereupon undertook to check with the Department of Justice again. He telephoned

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A. Yes, that is why I was in the campaign.

Q. Did you see the article yourself?

A. Yes, I was there. I got the clipping. The other story was that I had brought — you see, Lansky was even linked in everybody's mind with Courtney, Ritter and Bidwell, — and that I had brought Lansky to Groves. In the course of conversation with Mr. Lambert, the Groves name came in. Whether or not it was — wait a minute, you asked a specific question. Did I say that Mr. McLaney brought Mr. Lansky to Groves, or Sands?

Q. I said Groves.

A. I did not. I said that there was a story but the other story that I heard was that Mr. McLaney had come in with Lansky to see Sands long before Groves took up gambling.

Q. Mr. McCrary —

A. And Lansky had come in to see Sands. That is the story.

Q. It is your testimony that you heard a rumored story around town that Mr. McLaney was the one that introduced Lansky and Groves?

A. That was one story. The other was that Mr. McLaney introduced Lansky to Sands. Steve Barber confirmed Lansky came in with Sands too. Along with the whole Havana crowd.

Q. Did you report this to Mr. Lambert that this was something you heard rather than your own words?

A. Definitely. I would have no knowledge."

Mr. Peloquin and found that he was away from his office on naval training. He got the call through to him at a distant point where he asked him, "McLaney has come into this election campaign. I remember you mentioned his name. What can you tell me about him?" He testified that Peloquin said: "Well, it is coming off the top of my head, because I have no notes or information here with me." Peloquin then told him about McLaney being the manager for the Cat Cay Casino that belonged to an estate. Lambert testified that Peloquin gave him other information about his age, and his notes showed that he was a golf "prof," and then his notes showed "lightweight." In his testimony Lambert reconstructed this as Peloquin's having said, "He is a professional golfer, and that he was a golf hustler," and that he said, "He makes his living by his wits and he is a gambler," adding that "he is a lightweight." In his testimony, subsequently taken, Peloquin did not remember making any comments about McLaney's being a professional golfer or a golf hustler. However, he did testify twice that the notes, copies of which had been sent to him prior to his deposition, "are relatively accurate as to the information I had as to McLaney."

Lambert stated that Peloquin then suggested that he discuss the matter with United States Attorney Morganthau and Executive Assistant Gaynor, in the Southern District of New York.

Thereupon Lambert called Mr. Morganthau, who, aside from stating that he knew of McLaney in connection with the Carrousel Casino in Las Vegas, was unable to do more than suggest that he call Mr. Gaynor.

Although Lambert's notes indicated that he obtained some additional information from Gaynor, including, for the first time, mention of an association between McLaney and Carroll Rosenblum, the only undisputed testimony, since Gaynor did not recall these facts, is Gaynor's answer, "What I testify to, and my best recollection is that he asked me about the Nacional in Havana, and I replied to him that I had read things about that, and that could be checked very easily by newspaper morgue clippings and things of that sort."

Lambert testified that during the course of these inquiries he had read the morgue references to McLaney and the Nacional.[4]

Life's folder also included numerous articles which discussed Lansky's dominant position in control of gambling in Havana during this corresponding period of time.[5]

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[4]In the morgue were the following: A New York Times story which described McLaney as "The owner of a casino at the Nacional Hotel in Havana"; another article from the New York Times in which he was called "a former Havana casino owner"; a further story in the folder from the Times in which McLaney was described as the "operator of the casino of the Nacional Hotel." These three articles appeared between March 14 and March 24, 1959. There was also a May 4, 1963 clipping from the Washington Post, written by a well known columnist, in which McLaney was referred to as "an American gambler who ran a casino in Havana and stayed on for 18 months after Castro's takeover."

[5]Lambert commented particularly on statements from the morgue file, including the following:

"No American gambler, gangster or racketeer now can work in Havana without Lansky's OK." (N.Y. World-Telegram, Jan. 9, 1958; R. 69, 263.)

"Government supervision goes for all the games as

Thus the record appears to be undisputed that at the time the paragraph dealing with McLaney was written, substantial investigation had been made into the question whether McLaney was a professional gambler who had operated in Havana, Cuba, at a time when numerous press reports agreed that such an operation in the Cuban capital could be carried on only with the agreement or protection of Lansky.

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they are being run under the partnership that racketeer Lansky has negotiated with Batista. Regular police are assigned to 24-hour duty at all the big gaming casinos and secret police frequently mingle with the guests.

. . . .

But any number of other gamblers and bookmakers are around, including Frank Ritter and Max Courtney, who have long records, operating without interference from anyone. Courtney and Ritter, working with a New York attorney, have made several bids to get a piece of gambling at the Havana Hilton.

The Cuban government shows no sign of being aware of, much less disturbed by, the presence of the American mobsters on the Havana scene. And the prospect is that so long as Meyer Lansky, who is becoming the most feared racketeer in the U.S., remains a virtual partner of Dictator Batista in the gambling racket there will be no change.' (N.Y. Daily News, Jan. 1958; R. 72, 264-65."

". . . . No one could operate unless approved by Lansky, who has been a partner of Frank Erickson, Frank Costello, and 'Dandy Phil' Kastel, and knows his gambling fraternity.' (N. Y. Journal American, Feb. 21, 1958; R. 77, 267-68).

"All concessions to operate in Cuba had to have the OK of Lansky.' (N. Y. Journal American, Feb. 21, 1958; R. 78, 268.)"

". . . . None of the mob would make a move without talking it over with Miami's Meyer Lansky, 57, gangland boss of the southeastern U.S. and board chairman of the whole Havana show.' (Time, Mar. 2, 1959; R. 88, 270-71.)"

Thereupon, Lambert sought to check out McCrary's statement to him that McLaney had helped in the Pindling election. This he did by calling the new Prime Minister direct. The latter confirmed the fact that McLaney had made transportation available to the candidates in the "Out Islands," running as PLP candidates. Lambert testified that after completing this investigation he added the paragraph concerning McLaney to the article.

There is no suggestion that Lambert knew of any fact or circumstance which would cause him to doubt the truth of the statements made by him. Much is made by the appellee of the fact that, in his deposition, McCrary stressed the fact that much of what he told Lambert was hearsay — that is to say, rumors that he had heard around the Bahamas. This included the rumor, repeated by McCrary to Lambert, that McLaney was boasting in the bars of the Bahamas that he was going to take over the gambling business when the new government ousted the three Lansky henchmen.[6]

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[6]Lambert testified that this was stated to him by McCrary but that when he first heard it he gave no significance to it because it had come to him from an English newspaperman who had picked it up second hand. However, he testified that when he made his call to Prime Minister-Elect Pindling, he specifically put the question to him (presumably, he meant whether there was an agreement that McLaney was to take over the gambling under the new government) and Pindling answered, "Well, no, McLaney — we don't have any" — he said McLaney has just been helpful, and I don't know any of these things. He never did actually say — he didn't give me a flat denial about McLaney being involved. He did say that —

We are not here dealing with the correctness of all of the statements made in the paragraph complained of. We are concerned with the means by which Lambert obtained the basis for the statements, and, if required by the standard set down by the Supreme Court, the efforts he made to check the information. Finally, we must determine whether it is permissible for this court to conclude, as a matter of law, whether there was any fact put in issue on the record in the trial court which would require submission to a jury the question whether the plaintiff had carried his burden of showing not only the falsity of the statement, but, if false, that it was motivated by "actual malice," as defined by the recent Supreme Court decisions.

As we have shown, the record is undisputed that Lambert had ample justification for whatever statements were made to the effect that Meyer Lansky was head of a "mob" of gamblers in Havana; that this was with the connivance of dictator Batista, and that no one could carry on a major gambling operation in Havana without the consent of Lansky; that Ritter and Courtney and Brudner were operating openly in Havana at this time. It is equally clear that there was ample information available to Lambert to warrant his statement that McLaney was, at a time during and after the Batista regime, either the owner or operator of the casino at the Hotel Nacional. We attach no significance to the use of the word "ran," which Lam-

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the implication was that he had made no such arrangements and he didn't deny it.

"I didn't press it. I didn't think it was material." No statement to this effect was used in the article.

bert explains was a compromise between what he had found in the newspaper clippings saying in the one place that McLaney was "owner" and in another that he was "operator."

Moreover, Lambert testified that in an inquiry made to the Department of Justice lawyer Peloquin in the early fall of 1966, the latter told him that this organized gamblers group had moved from Havana to the Bahamas, and he named McLaney as one of these gamblers.[7]

Also, appellee emphasizes the differences between Lambert's testimony and McCrary's recollection of what was said on the occasion of McCrary's informing Lambert of McLaney's assistance given to the Pindling party in the election. These differences are irrelevant to the consideration before us now. All the information furnished by McCrary relevant to the pres-

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[7]In appellee's brief here, this personal conversation with Peloquin, is ignored. It is implied, rather, that the sole source of Lambert's information from Peloquin was the telephone call made to him in January of 1967, after having learned from McCrary of McLaney's activity in the election campaign. Appellant's counsel, in cross-examining Lambert as to his telephone conversation with Peloquin, sought to show that Peloquin did not discuss the removal of the gambling mob to the Bahamas nor that the word "mob" was ever used or that Lambert asked him whether or not McLaney was a Lansky associate. The point of the matter is this does not create any dispute of fact between Lambert's testimony and that of Peloquin, because Lambert's testimony about Peloquin having told of McLaney being a gambler in Havana and having moved to the Bahamas related to a conversation with Peloquin several months earlier, as to which no inquiry was made of him when his deposition was taken.

ent inquiry was the basic fact that McLaney had injected himself into the election of the new government, which was committed to put an end to the control of the gambling fraternity over governmental affairs in the Bahamas at a time when the records disclosed, without reference to whatever McCrary may have said, McLaney himself was a gambler, both as an individual and as an operator, and who had been operating a substantial gambling establishment in Cuba at a time when, according to reliable newspaper reports, such activity required such a person to be in league, directly or indirectly, with the overlord of all gambling, Meyer Lansky.

Drawing a conclusion therefrom that such a person was a "colleague" of the other three Havana gamblers, clearly identified as Lansky henchmen, required no further checking or verification, since "colleague" is merely a conclusionary word drawn from the basic facts which had been subjected to investigation.

As we have previously stated, courts, federal courts in particular, are reluctant to deprive a litigant of the opportunity to present his case to a jury. Particularly, under the Federal Constitution, are the courts denied the right to do so if there be a disputed issue of fact, which, if found in favor of the losing party, would entitle him to have a verdict by the jury sustained. Where, however, it is plain that the record has been fully developed by depositions and affidavits on a motion for summary judgment, and such record demonstrates that, construing all of the facts and inferences to be drawn therefrom in favor of the party against

whom the judgment is entered, he would not be entitled to have a jury verdict stand, we have not hesitated to hold that the grant of summary judgment is proper.

What, then, is the standard against which the facts of this case must be tested? The basic rule, denying full protection of the state libel laws because limited by the First Amendment, was set forth in *New York Times Co. v. Sullivan,* 376 U.S. 254. This court in *New York Times Co. v. Connor,* (5th Cir., 1966) 365 F.2d 267, discussed the Sullivan Rule:

> "'This case is admittedly governed by the legal standards enunciated in the recent Supreme Court case of New York Times Co. v. Sullivan, 1964, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 686, since Connor is clearly a public official. As such, he is prohibited 'from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.' Id. at 279, 84 S. Ct. at 726, 11 L. Ed. 2d at 706. The showing of malice may not be 'presumed but is a matter for proof by the plaintiff * * * [S]ince the question is one of alleged trespass across 'the line between speech unconditionally guaranteed and speech which may legitimately be regulated' * * * *we [must] 'examine for ourselves the statements in issue and the circumstances under which they were*

made to see * * * whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' The court concluded that '*the proof presented to show actual malice lacks the convincing clarity which the constitutional standard demands* * * *' and reversed the libel conviction. Id. at 284-286, 84 S. Ct. at 728-729, 11 L. Ed. 2d at 709-710. Additional explanation of the actual malice standard is found in Garrison v. Louisiana, 1964, 379 U.S. 64, 74-79, 85 S. Ct. 209, 216-218, 13 L. Ed. 2d 125, 132-135 in which the Court stated that: (emphasis added.)

> '* * * since' * * * erroneous statement is inevitable in free debate, and * * * it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need * * * to survive' * * *,' only those 'false statements made with the high degree of awareness of their probable falsity demanded by New York Times may be subject of either civil or criminal sanctions.'
> * * * *
>
> 'The test which we laid down in New York Times is not keyed to ordinary care; defeasance of the privilege is conditioned, not on mere negligence, but on reckless disregard for the truth."

The standard was later enunciated in *Time, Inc. v. Hill*, 385 U.S. 374 and then in *Curtis Publishing Co. v.*

Butts, 388 U.S. 130, *St. Amant v. Thompson*, 390 U.S. 727, and finally in *Pickering v. Board of Education*, 391 U.S. 563.

While the principle has been stated somewhat differently by majority, concurring and dissenting opinions, we note that throughout, as stated in the opinion in St. Amant, *supra*, "There must be sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubts as to the truth of his publication." 390 U.S. 727, 731.

So, too, the Supreme Court, in the Sullivan case, determined for itself that there was no issue of malice to be submitted to the jury. Being guided by the same test, we note that in this case there is a complete absence of any indication that the writer of the article had any suspicion of the falsity of the statements made by him, and there is a total lack of proof that he had before him any contra-indications as to the correctness of his conclusions. Thus, we answer the second question by deciding that this record, fully developed by affidavits and depositions taken at the instance of the plaintiff, demonstrated that no proof was adduced that had "the convincing clarity which the constitutional standard demands." *New York Times Co. v. Sullivan, supra*, at 286.

We come next to the first question: "Do the established facts make applicable this standard of actual malice?"

The cases already cited make clear that the thrust at state libel laws is proper in other varying situations in which matters of great public interest are involved. In Walker and Butts, *supra,* the standard of New York Times was applied to "public figures", and in Hill, *supra,* to suits for invasion of privacy based on false statements where a "matter of public interest is involved." Furthermore, we agree with the Court of Appeals for the Ninth Circuit which in its recent case, *United Medical Laboratories, Inc. v. Columbia Broadcasting System, Inc., et al* (9th Cir., No. 21,466) D.C. November 18, 1968, said: "The standard of New York Times was not to be regarded as having had 'its outer limits . . . marked out' so as not to be open to further definition.

We conclude that the constitutional privilege extends to discussions by specific individuals, not associated with any government, if those individuals are involved in matters of important public concern. Such was the case of the plaintiff here. He had injected himself into an election campaign in a small foreign country in which the announced policy of the opposition to the present government was the elimination of racketeer gambling. He had supported the effort of this reform government by contributing substantial material aid,* and thus lent a direct influence to the election of a national government for the country. Such activities as he engaged in, and his conduct as such a participant,

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*Varying values are stated by different persons as to the cost of the helicopter rentals incurred by McLaney. The amounts varied from $25,000 to $100,000. The figure of approximately $60,000 seems well established.

are the proper subject of inquiry and of public interest. It seems clear, that he, as much as General Walker in the Walker case, supra, acted in a manner that amounted to a "thrusting of his personality into the 'vortex' of an important public controversy."

We conclude, therefore, that the defendant was entitled to a summary judgment because, following a motion for such judgment, and after proof was taken to show, if possible, the existence of malice, the record is silent as to any facts which would permit a fact finder to conclude that the standard laid down by the Supreme Court had been met by the plaintiff.

The judgment denying motion for summary judgment is REVERSED and the case is REMANDED to the district court with directions that a summary judgment for the defendant be entered.